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Supreme Court, U.S.
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No. 94-1913

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1994

JERRY L. EDWARDS,

Petitioner,

V.

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA (UPGWA) and its AFFILIATED LOCAL 796,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should the Court reconsider its established decision in DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983), that federal policy dictates a six-month statute of limitations for hybrid breach of the duty of fair representation claims brought under Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. §185?

2. Is there any reason Petitioner's §301 hybrid claim is not governed by the statute of limitations established by DelCostello?

3. Did Respondent have an affirmative duty to inform Petitioner of his alleged right to sue Respondent, and the applicable statute of limitations for doing so, especially where Petitioner's counsel sent Respondent a demand letter indicating suit would be brought?

4. Did Petitioner's counsel, by sending four unsolicited demand letters to which Respondent did not respond, cause the statute of limitations to be tolled?

LIST OF PARTIES

Petitioner: Jerry Edwards, an individual

Respondent: International Union, United Plant Guard Workers of America (UPGWA) and its Affiliated Local 796, a labor organization

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RESPONDENTS' BRIEF IN OPPOSITION

TO THIS HONORABLE SUPREME COURT:

The respondent, International Union, United Plant Guard Workers of America (UPGWA) and its Affiliated Local 796, respectfully requests that this Court deny the Petition for Writ of Certiorari

which seeks review of the Tenth Circuit's opinion below. That opinion is reprinted in the Petition for Certiorari at Appendix A.

OPINIONS BELOW

In addition to the January 31, 1995 10th Circuit Court of Appeals Opinion, and the December 14, 1993 District Court Decision cited in the Petition for Writ of Certiorari, two other lower court Opinions issued:

- Tenth Circuit Order Denying Petition for Rehearing, dated February 23, 1995; and
- United States District Court, Eastern District of Oklahoma, Order denying Motion for Reconsideration, issued by Judge Seay, February 8, 1994

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

The jurisdiction of the 10th Circuit Court of Appeals was pursuant to 28 U.S.C. §1291.

The jurisdiction of the District Court was alleged pursuant to 29 U.S.C. §185.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

29 U.S.C. §185

STATEMENT OF THE CASE

Respondent accepts for these purposes Petitioner's statement of the case except to state that the decisions of the District Court and the Court of Appeals described by Petitioner speak for themselves.

SUMMARY OF THE ARGUMENT

The six-month statute of limitations for hybrid §301 suits alleging breach of a union's duty of fair representation serves federal labor policy, and assists

in resolving collective bargaining agreement disputes promptly and with finality. There is no reason to reconsider DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983).

Petitioner has filed a hybrid §301 action, which is governed by the statute of limitations established in DelCostello. Respondent's earlier §301 suit against Petitioner's former employer does not remove the instant suit from the six-month statute of limitations.

Respondent did not have an affirmative duty to inform Petitioner of his alleged right to bring this lawsuit, and of the applicable statute of limitations. Petitioner's four demand letters, unanswered by Respondent, did

not serve to toll the statute of limitations.

REASONS FOR DENYING THE PETITION

A. DelCostello Should Not be Reconsidered.

Petitioner asks this Court to overturn the case of DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983), arguing that the six-month statute of limitations it establishes is "esoteric, too short and difficult to determine." (Petition for Writ of Certiorari, p. 12). To the contrary, the definitiveness of the holding in DelCostello has served the national labor policy well.

The six-month statute of limitations established by DelCostello is not too short. Rather, it tracks the time limitations for filing a comparable unfair labor practice charge under the

National Labor Relations Act, 29 U.S.C. §160(b). Half a year is a reasonable period of time for a union member to recognize that he may have a claim and to file a hybrid action against the union.

In most cases, hybrid actions seek to enforce rights arising under a collective bargaining agreement; such agreements, with few exceptions, require parties to file grievances thereunder within weeks, if not days, of an alleged improper event. The short time periods provided for filing grievances result from the parties' recognition that matters arising under a collective bargaining agreement need to be resolved with finality in a very prompt fashion. This too was recognized by Congress when it created the six-month limitations

period in the National Labor Relations Act.

This Court in United Parcel Service, Inc. v. Mitchell, 451 U.S. 56 (1983), as quoted in DelCostello, 462 U.S. at 169, recognized the importance of resolving collective bargaining agreement issues promptly:

> Although the present case involves a fairly mundane and discrete wrongful-discharge complaint, the grievance and arbitration procedure often processes disputes involving interpretation of critical terms in the collective bargaining agreement affecting the entire relationship between the company and the union.... This system, with its heavy emphasis on grievance, arbitration, and the "law of the shop," could easily become unworkable if a decision which has given "meaning and content" to the terms of an agreement, and even affected subsequent modifications of the agreement, could suddenly be called into question as much as [three] years later. 451 U.S., at 63-64.

Allowing union members more than six months to file an action which ultimately requires interpretation of the collective bargaining agreement "would preclude the relatively rapid final resolution of labor disputes favored by federal law." DelCostello, 462 U.S. 168.

Nor, contrary to Petitioner's claim, is the six-month statute of limitations "difficult to determine." It is clearly stated in DelCostello, and mirrors the time limit applicable if the member seeks to file a charge against the union with the National Labor Relations Board. It applies to all hybrid actions, which ultimately seek to enforce collective bargaining agreement rights.

Petitioner's proposal would cause union members (and their attorneys) difficulties, however. Instead of a

national standard, Petitioner proposes applying state standards which might be codified or might be found in common law, and which would vary from state to state (even though the collective bargaining agreement in question might be national in scope). Petitioner's request to replace the explicit DelCostello limitation with state law would lead to confusion, not clarification, of the time limit for bringing suit.

B. Petitioner's Suit Was a Section 301/Hybrid Action.

Petitioner claims that his lawsuit, brought under 29 U.S.C. §185, and alleging a breach of the duty of fair representation, is not a §301 hybrid action subject to the six-month statute of limitations because Respondent previously filed an action under 29 U.S.C. §185 to vacate the arbitration

award. Without citing authority, Petitioner claims that the Union's suit to vacate the award constitutes *res judicata* against the employer, precluding Petitioner from filing an action against the employer himself. Again, without reference to authority, Petitioner claims that this alleged status places the action he brought not under the DelCostello statute of limitations for suits alleging breach of the duty of fair representation, but under the state statute of limitations for legal malpractice actions.

In its Opinion in this matter, the Tenth Circuit correctly states:

> Edwards provides no support for his contention [that he was precluded from bringing an action against his employer, Trover Security] and we reject it out of hand. The very purpose behind the creation of the "hybrid" cause of action in

> Vaca v. Sipes, 386 U.S. 171 (1967) was to enable an employee to hold his employer accountable for breaching its collective-bargaining agreement notwithstanding a "final" result obtained for him by his bargaining agent. See DelCostello, 462 U.S. at 164-65 (discussing Vaca and its progeny).
>
> Under Vaca, the district court's entry of summary judgment in favor of Trover merely marked the end of the Union's efforts on Edwards' behalf under the collective-bargaining agreement; it did not preclude Edwards from bringing a "hybrid" §301/unfair representation action against the Union, Trover or both. If Edwards could prove the Union's misconduct prevented him from obtaining a remedy against Trover for wrongful discharge under the terms of the agreement, he would be entitled to relief. See Vaca, 386 U.S. at 186. Edwards' contention that the Union's suit against Trover was somehow res judicata is therefore without merit.

Petition Appendix A, pp. 18a-19a.

Regardless of whether he chose to sue his employer, or could have,

Petitioner's suit remains a §301 hybrid action. To succeed in his action against Respondent, Petitioner must prove that his employer violated the collective bargaining agreement. DelCostello, 462 U.S. 165; Vaca v. Sipes, 386 U.S. 171 (1967). Thus, Petitioner's lawsuit is the classic §301 hybrid suit, even though the employer is not named.[1] As such, it was untimely filed, and appropriately was dismissed.

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[1]Even under Petitioner's theory that the lawsuit somehow is for malpractice, Petitioner would still need to prove the underlying claim (against the employer) to prove he was damaged by the Union's alleged improper behavior. See the 10th Circuit Opinion below, Petition Appendix A, p. 16(a), fn 2.

C. The Statute of Limitations Was Not Tolled.

1. Respondent Did Not Owe Petitioner a Duty to Inform Him of His Alleged Right to Sue the Union.

Again without citing authority, Petitioner claims both that Respondent should have informed Petitioner of his right to sue the Union and further to tell Petitioner when the statute of limitations expired. There is no legal basis for this claim that unions must inform members to sue them, and when. Regardless, Respondent maintains it did nothing wrong, and that it did not breach its duty of fair representation; thus, since Petitioner's rights were not violated, there was nothing about which to inform him.

Even were there a legal basis for the claim, factually it must fail. By

letter dated November 28, 1992, Petitioner's attorney wrote the Union that the Union had "breach[ed] . . . its duty of fair representation . . ." and that unless a sum was paid Petitioner, he would "file a lawsuit." (See 10th Circuit Opinion, Petition Appendix A, p. 31a). This letter demonstrates that on November 28, 1992, Petitioner had knowledge of a claim for breach of the duty of fair representation and had retained counsel (who presumably knew the appropriate statute of limitations) to pursue that claim. During the more than seven months that passed until Petitioner filed his lawsuit, what more should (or could) Respondent have informed him?

2. **Petitioner's Demand Letters Do Not Toll the Statute of Limitations.**

As noted above, on November 28, 1992, Petitioner's counsel sent a demand letter threatening legal action. Three more demand letters were sent before the lawsuit was filed. Respondent chose not to respond to any of the letters.

Petitioner claims that the six-month statute of limitations was tolled by the Union's failure to respond to the demand letters. Petitioner does not appear to claim active deception by Respondent, but rather that he was "lulled" into inaction. Since Petitioner was represented by counsel, and Respondent by all accounts took no affirmative action, Petitioner's inaction was his own choice. Considering that in the underlying arbitration the arbitrator dismissed the

grievance due to the Union's alleged inaction, Petitioner and his counsel were well aware of the dangers inherent in waiting. Petitioner and his counsel cannot shift the consequences of their mistake to Respondent.

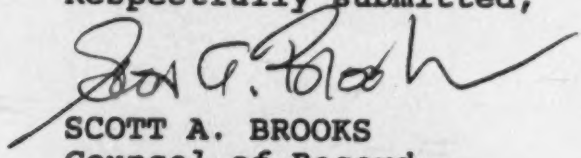
CONCLUSION

The Tenth Circuit Opinion below is not in conflict with the decision of another United States Court of Appeals and does not depart from the accepted and usual course of judicial proceedings so as to call for an exercise of this Court's power of supervision.

Respondent International Union, United Plant Guard Workers of America (UPGWA) and its Affiliated Local 796, requests that this Court deny the

Petition for Writ of Certiorari because it is legally and factually baseless.

Respectfully submitted,



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